◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

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+ WA.No. 2048 OF 2005

% Dated 28.1.2006

E. Tirupem Reddy

…Appellant

Vs.

$ The Deputy Superintendent of Police, Nandyal, Kurnool Dist and others

…Respondents.

! Counsel for appellant: Mr. E. Ayyapa Reddy

^Counsel for Respondents: G.P. for Home,

<GIST:

> HEAD NOTE:

? Cases referred

1. 2004 (6) ALT 757 (FB);
2. 2003 (2) ALD (Crl.) 421 (AP);
3. 2005 (1) ALD (Crl.) 771 (AP);

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 2048 OF 2005

Dt. 28.1.2006

Between:

E. Tirupem Reddy

…Appellant

and

The Deputy Superintendent of Police, Nandyal, Kurnool Dist and others

…Respondents.

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 2048 OF 2005

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This is an appeal filed against the order dt. 16.9.2005 passed by a learned single Judge of this Court who dismissed the writ petition being WP No. 4810 of 2004. The parties shall be referred to as they appear in the writ petition.

The writ petitioner filed a writ petition seeking quashing of First Information Report having been registered as Cr.No. 11 of 2004 of Gadivemula Police Station by 2nd respondent. It was stated that in the FIR no offence whatsoever under Sections 420 and 506 IPC was made out and the 3rd respondent tried to take undue advantage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC & ST Act) and deliberately concocted a story and gave the complaint against the petitioner. No offence under Section 3 (1) (x) of the SC & ST Act was made out even according to the allegations made in the complaint. It was not alleged that the place where the 3rd respondent had met the petitioner was a public place and that the 3rd respondent had been

insulted by the petitioner publicly and there was no person by name Nadam Erranna in the village as is evident from the certificate issued by the concerned Mandal Revenue Officer.

The law is well settled that the Court can exercise the power of quashing the FIRs or the complaints sparingly and this power is mainly exercised when no offence is disclosed in the complaint or in the FIR. If the FIR is taken to be true and even then it is found that no offence is committed, the Court can exercise such jurisdiction. In this connection a reference is made to a judgment of Full Bench of this Court reported in *Girish Sarwate Vs. State of A.P. rep. By Public Prosecutor and another* . In the light of this test, let us see the complaint and thereafter go to the arguments made by the learned counsel for the appellant/writ petitioner.

The FIR discloses some past alleged transactions between the petitioner and 3rd respondent. It is also mentioned in the FIR that the writ petitioner had obtained the thumb impressions of 3rd respondent on some bonds and the 3rd respondent was demanding the bonds. These bonds were taken by the writ petitioner from the 3rd respondent promising him that he would give financial assistance for the purpose of purchasing a Jowar Crushing Machine. The crushing machine was not supplied nor any financial assistance was arranged and the bonds were also not returned. The writ petitioner, on the other hand, got a machine and kept it in his own stray yard and was using it personally. The 3rd respondent demanded the bonds or the machine. Then the writ petitioner started abusing him by taking his caste name as "*Madiga Na Koduka Nevu Nannu Padepadu Bondlu Gani Jonnala Krushing Machine Gani Adiginatteaiti Ne Anthu Chustanu*". Further it is stated in the complaint, "*Subsequently on 7.2.2004 at about 10.00 A.M. the said Tirupam Reddy while going through the passage from our S.C. colony, once again I requested him and intended to know about the bond and the Jowar Crushing Machine, again he abused me "Are Madiga Koduka Neku Bayapadi Vapasu Ivvavalana and further threatened me to inform wherever I*

like and nobody can do anything to him. Further he stated that he is having political support. At that time my wife and other Nagam Yerranna s/o Hanumanthu were also present at the scene. He humiliated me and my wife by taking our caste."

Section 3 (1) (x) of the SC & ST Act lays down,

> "Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-
>
> "intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

The learned counsel for the appellant/writ petitioner submits that even if the allegations leveled in the FIR are taken to be true, there is no allegation that the words uttered by the writ petitioner were uttered in a public view with an intention of insulting or intimidating the 3rd respondent. In the FIR itself the 3rd respondent had mentioned that it was a public road and it occurred in presence of his wife and Nagam Yerranna s/o Hanumanthu. Whether the words were uttered in a public view or not is a question of fact which will have to be decided during the trial.

The learned counsel for the writ petitioner has relied on a judgment of this Court reported in *K. Padma Reddy Vs. Station House Officer, Bellampalli and others* . This judgment is not at all applicable to the present controversy because the utterances were made within the chambers of Municipal Commissioner, which, according to the Court, was not within the public view. Even otherwise we do not agree with the law laid down in this judgment because what is required under Section 3 (1) (x) of the SC & ST Act is, "intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view." Therefore such an act should have been done by accused in any place within the public view and it is not necessary that such place should be a public place. It can be even in a place

which is not a public place, but which would be within the public view. A collector's office may not be a public place, but it is a place within the public view where people generally go and at certain times public would be available within the Municipal Commissioner's office and at some points of time public may not be available at such a place and it depends upon the facts of each case. The legislature, in our view, was conscious of the fact that offence can take place even at a place which is not a public place. Therefore they did not say in Section 3 (1) (x) of the SC & ST Act that the offence should be committed in a public place. They deliberately used the words "in any place within the public view". Therefore in our view the judgment of this Court reported in *K. Padma Reddy Vs. Station House Officer, Bellampalli and others* (2nd supra) does not lay down a good law and is overruled.

Reference has also been made to another judgment of this Court reported in *Goluguri Ramakrishna Reddy and another Vs. State of A.P. and another* . Similarly this judgment has not, in our view, laid down correct law. Again a mistake was committed in taking the term "in a place within the public view" as a "public place". A public place is a place where the public generally are permitted to assemble, but somebody's office, chamber or residence can never be a public place. The learned single Judge in this judgment has correctly come to the conclusion, while taking the definition of "public" from Section 12 of the Indian Penal Code, that public place is a place where ordinarily the public visit for some purpose or other than with uninterrupted regularity though not continuously, but a mistake was committed when the term "within the public view" was taken as synonymous to "place within public view". For instance, somebody's residential house is not a public place, but if somebody invites members of public to a wedding in his house, it becomes, on that count, a place within the public view, though it does not become a public place. The distinction is unambiguous between the terms "public place" and "within the public view". Private places, as opposed to public places, can become places within the public view. The

learned single Judge in this judgment also mentioned the definition of "place within the public view" as contained in Words and Phrases (Vol. 35A Permanent Edition West Publishing Company-2002 Cumulative Supplementary Pamphlet, P51) that the term "in view of the public" has been defined as under,

> "When accused exposed himself to a babysitter in his bedroom, he exposed himself to "public view" as required for offense of indecent exposure, since term does not mean a "public place" but "in view of the pubic".
>
> With respect to element of indecent exposure requiring that accused exposed a certain part of is body to public view in an indecent manner, "public view" occurs when the exposure is done in a place and in a manner that is reasonably expected to be viewed by another."

For the reasons given hereinabove, we also do not uphold the views in this judgment concerning the meaning of term "in the view of public". Wherever public is watching and wherever an incident is viewed by members of the public, it is "public view", whether it is a private place or a public place. The complaint in the present case discloses that it was at a street that the incident occurred which was viewed by two persons, whether this is true or false will have to be decided during the trial.

For these reasons, we do not find any merit in this appeal which is accordingly dismissed.

Dt.28.1.2006 _____

BILAL NAZKI J.

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R.SUBHASH REDDY J.

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